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SUBJECT: ADDRESSING ABYEI

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(B) KHARTOUM 1813
(C) KHARTOUM 1719
(D) KHARTOUM 1847

¶1. (SBU) The complex issue of Abyei has haunted implementation of the CPA since the beginning. It is the only part of the agreement that seen zero progress towards implementation since the signing of the peace accord in 2005. A warning should be sounded to any in the international community who seek to delve into this esoteric, emotional topic which has generated a whole regiment of opinionated, knowledgeable and passionate experts in Sudan on both sides of the political divide. Preparation and depth of knowledge is key to those who wish to help break the deadlock.

¶2. (SBU) In advance of Secretary Rice's planned December 5 Ministerial meeting in Addis Ababa to discuss implementation of the Comprehensive Peace Agreement (CPA), we offer the following recommendations on Abyei, which lies at the heart of the current NCP-SPLM standoff (reftels provide additional suggestions and background). We do not yet know if the NCP will attend the Ministerial-level meeting. If they do not, the recommendations outlined here will inform our future engagement with the SPLM and NCP on the issue of Abyei. Post highly recommends that the U.S. engage at a high level on this issue, as leadership on the issue is lacking and failure to move forward could spell disaster for the CPA and possibly for peace in Sudan.

¶2. (SBU) Currently the NCP and SPLM are relying on legalistic arguments and their discussions have ground to a halt while they seek tactical advantage. Meanwhile the Abyei issue blocks progress on other more important aspects of the CPA, such as the electoral law, the census, and troop redeployment. The SPLM would like the U.S. or other IGAD partners to take up the fight for them and insist on full implementation of the Abyei Boundaries Commission (ABC) Report. However, the NCP has legal arguments for why the ABC report is not valid and is unlikely to change its position, even in the face of mounting domestic and international pressure, especially after President Al-Bashir's very public dismissal. Therefore we believe a negotiated solution is more likely to produce results and get the CPA back on track.

Recommendation 1: Move forward on the rest of the CPA

While a solution for Abyei is under discussion, the parties must be pressed to resume their work on implementing all other aspects of the CPA, including troop redeployments, the conduct of the census, and the passage of the elections law. Abyei cannot be allowed to hold the CPA and the Government of National Unity (GNU) hostage. The SPLM, several of whose leaders are from Abyei, will not agree to move forward on other issues without a solution on Abyei. They fear that the NCP claim all problems are solved and then go back to stonewalling on Abyei.

Recommendation 2: Allow experts to present the ABC report

The parties must move beyond their current legalistic battle and allow the Abyei Boundaries Commission (ABC) to present its report as a starting point for discussions between the parties on a way forward. The NCP claims the ABC experts went beyond their CPA mandate, which according to the Abyei Protocol of the CPA was to define the boundaries of the nine Ngok Dinka kingdoms in 1905, thus the ABC report is invalid. The SPLM claims that the ABC report must be implemented as required in the CPA (the Abyei appendix says the ABC report is "final and binding.") The fact of the matter is that defining the 1905 border is nearly impossible based on a scarcity of historical maps, and therefore the ABC did go beyond its mandate to look at later historical borders (according to our own analysis and other observers in Khartoum.)

Recommendation 3: Reconstitute the ABC Panel

The current panel of experts has become controversial. The panel could be reconstituted with the agreement of the parties (the mandate is already in place for representation from all interested parties) and given a proscribed mandate to stay strictly within the confines of the CPA with regard to the border. The reconstituted panel could be directed to reach a consensual decision based on all of the historical evidence presented (as opposed to a report directed by the experts, as occurred with the current ABC report). This approach has the advantage of staying closer to the text of the CPA - which does not envisage arbitration or direct negotiations - and avoiding protracted negotiations. The NCP's preferred option is drawn out negotiations or arbitration while it continues to enjoy the full benefit of Abyei's oil wealth. (Note: The GNU has not begun sharing Abyei oil revenue with the GOSS, Bahr al Ghazal region, Western Kordofan, the Ngok Dinka, or the Misseriya Arabs

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presumably because the ABC report was not implemented and the special administration for Abyei was not put in place as a result. End note.) If the reconstituted ABC panel fails, negotiations with international intervention will likely be necessary.

Recommendation 4: Separate land from oil in negotiations

Apart from the border demarcation issue, if there is to be a final solution on Abyei, negotiations on future oil revenues beyond the 2011 referendum will likely be required because the NCP depends on (declining) oil revenues from Abyei. If the parties are unable to reach a negotiated solution on their own, outside intervention will likely be required, despite the NCP's contention that it does not want to "internationalize" CPA discussions. High-level intervention from the U.S. could move the parties forward, with a meeting hosted in the U.S. as suggested in Ref B. The NCP's primary interest in Abyei is oil (though oil production in the area is declining). The SPLM's primary interest is land (the historical nine Ngok Dinka kingdoms). Thus a negotiated solution would logically include land for the South in exchange for a share of oil revenue for the North even after the 2011 referendum on Southern self-determination, since the pipeline and infrastructure pass through the North. (Comment: We recommend that the many examples of wealth sharing, such as East Timor or the North Sea, should be examined and a compilation of such wealth sharing models from other regions be produced for the parties to consider.)

Recommendation 5: Grazing rights for the Misseriya

Any agreement reached must include the nomadic Misseriya Arabs and provide them grazing rights on both sides of the border. It is also only fair that Southern states also be compensated for the confirmation of those traditional grazing rights. The Misseriya should also be included in the long-term revenue sharing scheme, as should the Ngok Dinka, the Bahr al Ghazal region, and Western Kordofan. Since the Abyei Protocol sets the precedent for revenue sharing between all six entities during the interim administration, if there is a deal for Abyei oil revenue sharing between the North and South after the interim period, it should again include all six entities.

Recommendation 6: Appeal to other nations

China, Malaysia, and India are the countries with oil interests in Sudan. They should be called on urge the parties toward an early agreement, as the financial consequences of the parties not resolving this issue will affect them directly.

Recommendation 7: Introduce incentives

If it becomes engaged in negotiations, the U.S. could introduce incentives to move beyond a "zero sum" negotiating exercise. For example, with waivers to sanctions, Abyei could become a special economic zone where U.S. firms that have more advanced technology in extracting oil from depleted fields could participate in oil exploration. The Chinese would likely be very interested in such collaboration as well.

Recommendation 8: Review the historical texts

If the U.S. plans to become actively involved in negotiations on Abyei, it will have to begin gathering a database of historical information to inform its involvement. The NCP has gathered an impressive electronic library of maps and historical references to Abyei to support its claim that the ABC experts went beyond their mandate. The ABC panel should make any documents it acquired available to the parties, and the U.S. should begin doing research of its own rather than relying on the parties or the ABC, if it is to engage credibly.

Recommendation 9: Study projected Abyei oil revenues

In concert with the Norwegians, who have a Petroleum envoy based in Khartoum, and Dutch (who chair the AEC working group on the "three areas") the U.S. should assist with a detailed analysis of the anticipated declining oil revenues from Abyei. (Which may ease the pain to the NCP of "losing" territory in Abyei.) The financial implications of pipeline rights should be included in this study, so that both the SPLM and the NCP can have access to baseline data on which to base their negotiations.

Recommendation 10: Address the issue of arrears

The issue of Abyei oil revenue arrears to the GOSS, Bahr al Ghazal, Western Kordofan, the Dinka, and the Misseriya needs to be addressed. As it stands now, the GNU may owe several hundred million dollars in total to these entities due to delayed

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installment of the interim administration in Abyei. The GOSS may be willing to pay this in exchange for a guarantee of a share of future oil revenue and pipeline fees.

13. (SBU) These ideas just scratch the surface of a complicated political and economic issue. With the leadership of the two parties meeting on this issue and other CPA problems in the next few days, these ideas may be completely overtaken by events, radically altered or be even more pertinent by December 5.

FERNANDEZ